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(1)

Supreme Court, U.S.
FILED

No. : 071144

JAN 30 2008
OFFICE OF THE CLERK

In the

Supreme Court of the United States

RUBIN STERNGASS,

Petitioner,

-against-

TOWN OF WOODBURY, SHEILA H. CONROY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RUBIN STERNGASS
Petitioner, Pro Se
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QUESTIONS PRESENTED

1. May this State action, subsequent to the vesting of property rights, amend and evade its Municipal obligations and duty to protect pursuant to constitutional mandate?

2. If so permitted, does that not create a "taking" in violation of substantive Due Process and Equal Protection, as mandated?

3. If a "taking" is permitted and/or created, does not the Law of Eminent Domain require compensation, based upon the "highest and best permitted use", as originally mandated by the State's Enabling Act in 1928?

4. Shall the Common Law principles and court edicts prevail against acts of State-controlled despotism and real property taxes be abated and refunded, pending this Honorable Court's response?

5. Does subsequent statutory authority repeal Common Law Principles, as stated within the constitution, or is the constitution to be so evaded?

6. Should the Legislature create a crime and/or offence that would restrict Municipal acts of despotism?

7. If the crime and/or offense NOW exists by Statute, should it not be enforced by contempt of judicial process at the District Court Level?

8. May the State create a property liability by retroactive regulatory offenses for acts completed in compliance with prior statutes?

9. Is the Motion to Dismiss, as granted by the District Court, permitted "direct review status" in this application before this Honorable Supreme Court?

10. Local land use authority is subject to Rights created by State and Federal Statutes and Constitutional Provisions; Does that permit exclusionary Housing Practices that abolish as of right use in compliance with 1928 Zoning Ordinance?

11. Does not substantial improvements, in compliance with zoning, mandate Federal protection against State action ("Ex Post Facto" liability)?

LIST OF PARTIES

The parties to the proceeding are shown in the caption.

Petitioners are not a corporation.

Respondent is not a foreign bank and we have no knowledge of parent corporations or subsidiaries.

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STATEMENT OF THE BASIS FOR THE JURISDICTION

This is a controversy between the United States and an agency of the State; and pursuant to 28 USC 1251(b)(2), "all controversies between the United States and a state" should be viewed as original jurisdiction of this Honorable Court and further elicited within. The invocation of Federal Court Jurisdiction is proper *[Warth v. Seldin,* 422 US 490, 498 (1975)] and 28 U.S.C. 1331 (B & C).

At issue is the conveyability of established and recorded rights that are affected by a deed to real property, which has been improved prior to the regulatory taking under New York State's enabling act to permit zoning to occur in the Town of Woodbury, County of Orange, that is dated 1928 and has been part of this record [Reproduced at 27a-38a].

Also at issue is the retroactive amendment applied in 1953 and its constitutional affect under the Fifth (5th) and Fourteenth (14th) Amendments to the United States Constitution and as most currently addressed by the United States Supreme Court Decree *[Lingle v. Chevron,* 543 US 1118, 125 S. Ct. 1105 (1/24/05)] – specifically, Due Process is to be protected by the supremacy clause *[Valley Forge College v. Americans United,* 454 US 464, 476 N13 (1982)] and *[Flast v. Cohen* 392 US 83, 97 (1968)]. *[Martin v. Hunter's Lessee* 14 U.S. (1 WHEAT) 304, @ 332, 4 LED 97 @ 104 (1816). Should not restrict.

Also at issue is that this Petition should be viewed as an appeal as it is rooted prior to the Repealing Act, dated 1988 and a Federal Question involved *Cohens v. Virginia,* 19 U.S. (6 WHEAT) 264, @394; 5 LED 251 @ 288-89 (1821), and thereby permit this Honorable Court to review the deeded history from the recorded and filed Map in 1921, the 1928 Zoning Ordinance, the Maisel Deed in 1944, and its conveyance without notice to this "Good Faith Purchaser" and Petitioner in 1971.

CONSTITUTIONAL PROVISIONS

In its full review, the obvious State position, taken by this Municipal Respondent, is that its Amendment in 1953 was valid under the guise of Public, Health, Welfare, and Safety and not contrary to the Petitioner's vested property rights of entitlement. The contrary is the Law of Precedent since the days of the Honorable Chief Justice Marshall's "No Middle Ground" edict in *Marbury v. Madison,* 1 CRANCH #137, 5 U.S. 137; 2 LED 60 (1803) and *Cooper v. Aaron* 358 US1; 78 S Ct. 1401 @1409, Article II of our Constitution And *Ex Parte Virginia,* 100 U.S. 339 @ 347; 25 LED 676.

Also at issue is the Federal Judicial Determination and New York law of the vesting effect of the grant in 1964, of a use variance. (21a-23a) Cite: *Fina v. Young* 177 NYS2 535 "It is the use of the Land Pursuant, to a zoning ordinance" that enacts the vested right." (*City of Cleburn v. Cleburne,* 473 US 432 @ 451; 105 S. Ct. 3249, 3260) (1985) and the Petitioner's Zone of Interest, which is

part of this Record, dated 1964; and thereafter, it's owners' rights, title, and interest to contest the unconstitutionality of that 1953 Amendment and as applied to this site, as conveyed in 1971; *Agins v. City of Tiburon,* 447 U.S. 255, thereby establishing my direct financial interest in the use and development of the real property (12 acre) pursuant to vested entitlements [*Williamson County v. Hamilton Bank,* 473 US 172; 105 S. Ct 3108 (1985) on remand and 779 F2d 50 and *Fletcher v. Peck,* 10 US (6 CRANCH) 87; 3 LED 162 (1820)]. And Professor Edwin Corwin's "*Liberty Against Government*" 72, 88 (1948).

STATEMENT OF THE CASE

This Defendant Municipality should not be permitted to repudiate its obligations and a duty, as so defined in 1928 and 1964 and pursuant to the Doctrine of "Governmental Encouragement" that causes and creates a substantive violation of a constitutional guarantee upon compliance and "Good Faith" Compliance cite: *Cooper v. Dasher* 290 U.S.B.R. 106 (Hon. Justice Cardozza) "If it is clear enough to be understood, it is clear enough to be obeyed."

"Seasonal Dwelling" does not appear within the 1928 Zoning Ordinance, it became the Town's by-product definition of racial discrimination by their Amendment in 1953. (21a and 27a)

The Petitioner has been personally injured, unduly oppressed, and caught in the web of anti-

religious activities that has been designed to minimize the "Jewish infiltration" by the Town of Woodbury. The primary purpose and effect of the creation of the newly formed Village of Woodbury (August 8, 2006) is to inhibit the practice of religion and is so motivated by the intent to continue that activity to which the Constitution & Judiciary views as an invalid social goal, unless permitted by similar Constitutional Amendment that affected the liquor industry; the Fifth (5th) Amendment, Due Process, and Equal Protection is thusly raised [*Wynehamer v. People* (1856), 13 NY (3 Kern), 378]. And *Hudson v. Palmer,* 468 U.S. 517 @ 533; 104 S. Ct. 3194 @ 3204 (1985).

REASONS FOR GRANTING THE WRIT

As a Village, under New York State Law, they can prevent the newly formation of or control another existing religious Village within their boundaries [*McDaniel v. Paty,* 435 US 618, 98 S. Ct 322*)* *(*1978). The Petitioner's lands are included within the new Village and are now subject to new regulations and authority intended to and that will divest the vested entitlements of the Petitioner and should, therefore, be granted Writ Relief, pursuant to 28 USC 1651, the Common Law, and 28 USC 1257 [*Larkin v. Grendel,* 459 US 116, 103 S. Ct 505, 74 LED2 297 (1982)].

The Common Law of Property permits an owner of fee simple real property to "use" that does not create an injury to his neighbors. Cite: *Berenson v. Town of New Castle*, 38 N.Y. 2106, 341 N.E. 2236,

378 NYS 2672 (1975) and *Gorden v. Ramapo*, 30 NY2d 359, 285 N.E. 2 291, 334 NYS 2138 (1972) and the seminal Zoning case *Village of Euclid v. Amber Realty,* 272 U.S. 365, 47 S. Ct. 114, mandates compliance where there is to be a substantial relation to the public health, safety, morals or general welfare. That edict does not include exclusionary purpose, as that is an inherent Constitional principle that shall not be violated and the Common Law of vested property is sacred & fundamental. The Petitioner's deed, in 1971 contained and continued the prescriptive use for septic fluid discharge, which ran with this deeded land and by an option to purchase the retained 23 +/- acres of its grantor Maisel. That use was intentionally destroyed and eliminated by Municipal activity for the benefits of others in the approval process for "Ridge Road Estates" in the year 2001, which was a four (4) lot subdivision of the grantor's retained lot. Eminent Domain requires just compensation [*Kaiser v. US* 444, US 164, 100 S. Ct 383 (1979) and *Pennsylvania Coal v. Mahon,* 260 US 393; 43 S. Ct. 158 (1922)] and Briarcliff Associates Inc. (54a).

That Municipal activity is and was an invasion of property and should be viewed, by this Honorable Court, as a taking without just compensation and violative Due Process [*Loretto v. Teleprompter,* 458 US 419, 102 S. Ct 3164 (1982) and *Connoly v. Pension-Benefit* 475 US 211 @ 225; 106 S. Ct 1018 @1026 (1986) and Briarcliff Associates Inc. (54a)].

I assert that the facts sustain that this matter is a State action. I further assert that a deprivation of a fundamental and constitutional right has been created by this Municipal Defendant in violation of substantive Due Process exists, and an inquiry and determination should finalize this issue, as so ably stated by this Honorable Justice O'Connor in 2005 [*Lingel v. Chevron*, et. al., 543 US 1118, 125 S. Ct., 1105 (1/24/05)] and *Vernon Park Realty v. City of Mount Vernon* (1954) 307 N.Y. 493; 121 N.E.2 517, *Lucas v. South Carolina Coastal Commission,* 112 S. Ct., 2886 @ 2899 and 2901 and *Bernard v. Scharps,* 675 N.Y.S. 2 64.

As a result of the foregoing Municipal activity, the total income losses became final. The property is in an unsaleable state, due to the "uncertainty of use". A potential developer must make his offer to purchase this property "subject to" a determination by the Municipality. Such oppression is constitutionally invalid. The Zoning Ordinance of 1928 is the result of the states enabling statute and therefore, is the only valid regulation; and all amendments thereafter shall not impair existing vested entitlements-and if they do so impair, it is to be held to be contrary to Constitutional limitation and void. The variance, as granted in 1964, (21a-23a) sustained the balance of the original zoning ordinance. [*Pumpbelly v. Greenbay*, 80 US (13 Wall) 166 @ 179, 180, 120 LED 557 (1871) and *Campbell v. Holt,* 115 US 620, 6 S. Ct. 209 (1885) and *Penn Central Transportation v. N.Y. City,* 438 U.S. @ 124-125.]

This view has been continued by State cases in New York; and its principal is confirmed and in compliance with the supremacy clause and/or the contract clause, and by the fundamental teachings of Contract Law on Williston's "Offer and Acceptance" and the Legal effect of an "Executed Contract" based upon the grant prior in 1928. (27a-38a) The 1953 Amendment (subsequent Legislative Acts that restrict a conforming use under the permitted specifications of the 1928 Zoning Ordinance) as it illegally created a liability to this property that was an unexpected and un-authorized liability, and upon this Honorable Court's reading, should be viewed as a breach of contract, an abnegation of duty and authority by a Municipal Defendant, and just compensation with an effective Order of Mandamus to prevent the continuance to oppress by its inalienability of this property - valued in excess of 20 Million Dollars - is a properly sought relief in this Honorable Court. The Doctrines of *Res Judicata*, *Stare Decis*, and Collateral and Judicial *Estoppel* apply - NOW - before this Honorable Court [*Board of Regents v. Roth*, 405 US 564, 92 S. Ct. 2701 (1972) and *Logan v. Zimmerman*, 455 US 422 (1982)], *Cleveland Board of Education v. Loudermill* 470 U.S. 532 (1985).

A critical point, which may have been overlooked by the District and Appellate Courts, is the Judicial Judgment of the Zoning Board of Appeals in 1964. My view is that the use of variance was granted and to negate the effect of the 1964 (21a-23a) Zoning Board of Appeals Constitutional Impact, would destroy the notions of fair play,

substantial Justice, *St. Onge v. Donovan,* 71 NY 2 507 (1988) and Federal District Court's authority [*Ward v. Monroeville,* 409 US 57, 98 S. Ct. 80; 34 LED2 267 (1972)] for the reasons stated; and I reformulate that decision/order now herein:

> and that such entitlement, being previously granted by the 1928 Zoning Ordinance, and now again confirmed by Zoning Board of Appeals Decision, shall not be denied and thusly violate rights of constitutional property.

[*Matlock v. Town of Harrah,* 719 F. Supp. 15 US @ 1527 (1989)]. Quoted in part from Prof. Daniel R. Mandelker – Washington University of Law:

> "While a holding of un-constitutionality would lift the zoning restriction from the affected parcel, the grant of a use variance has much the same result...
>
> The grant of a use variance for all practical purposes will have the same effect".
>
> "All that is prevented is possible damage to the entire ordinance."

Citations in support: *Gorieb v. Fox,* 274 U.S. 603 (195), *Larkin v. Schwab,* 242 N.Y. 330 (1926); and, *Otto v. Steinhilber,* 282 N.Y. 71 (1939) 10 @ p. 78. "Residences on and reliance upon the design of the zoning ordinance".

It is clear that the vesting by compliance to the 1928 Zoning Ordinance was in issue before that Zoning Board of Appeals, and their Quasi-Judicial capacity and their Decision confirms my premises, and as argued below, and should have been viewed by the Lower Courts and determined by *Res Judicata* or Collateral or Judicial *Estoppel* principles. Consideration of these equitable and legal Judicial principles and issues were enforced prior to 1791 and subsequently, as Federal and State do not conflict. As the public and/or the Town Board had the capability of appeal to the State Court, their lack of such is to be viewed as a waiver; and this Municipality Defendant should not be NOW permitted to oppose this action by espousing an inconsistent position now. They should be susceptible to Judicial Sanction under common law trespass on the case with daily renewal of liability and damages. Court review has ended; enforcement is the proper issue now.

Fundamental principles of this Honorable Court's past decisions are in accord with this view. This Honorable Court has continually held that a "fair Trial in a fair Tribunal is a basic requirement of Due Process", and this is applicable to State agencies and judges, alike, as "administrative agencies should fashion their own rules of procedure" [Federal Support, 28 USCA 1738 (1963)]. The problem is that an individual property-owner's zone of interest is not as large or important as that of the NAACP in Yonkers, New York (*cite missing)* but the Honorable Justice Sands in the Second Circuit of New York is embedded in my memory. Arbitrary and invidious

regulatory abuse of governmental power should not be condoned.

Despotism is not in harmony with Benjamin Franklin's oratory in 1787, which was included in my Petition for Rehearing and summarily denied by the Second Circuit Court of Appeals. (20a)

My Certification of Service establishes the proper named officials of the Village of Woodbury; and as established below, this occurred on August 8, 2006, which was after my filed Notice of Appeal to the Circuit Court of Appeals.

The Mandamus Writ that I seek should be applied by this Honorable Court's Order to these named officials of the Village of Woodbury - or by Order to Show Cause on a day to be fixed by Court Order-why Mandamus should not issue, with return date within my lifetime and priority consideration.

The Decisions of the Courts below should be vacated and corrected by Writ of Mandamus, pursuant to 28 USCA No. 1651 and No.1652, as there is no adequate remedy at Law - especially at my age of 83, and a Trial, pursuant to the Seventh (7th) Amendment – at my vintage – is an inadequate remedy. And the Local Administrative Agency has no authority to decide this Constitutional issue at this Juncture. The common law of "Trespass on the case" creates liability, on a daily basis, with damages to be assessed, until compliance with the mandated duty by this new Village of Woodbury.

In 1961, the State of New York, created – and therein established its intent – to "preempt" local regulation of multiple dwellings and residential si es with multiple dwellings or residences. Title is Multiple Dwelling Law of the State of New York. This land was so conveyed to the Petitioner, in 1971, as an existing and improved multiple dwelling site and so regulated by the State's Preemption Statute in 1961; and by the Federal Public Accommodations Acts of 1964 and 1968; and thereby so occupying that field and preempting Local Zoning and Planning retroactive authority, otherwise, that would cause the Supremacy Clause to fail (Article VI, Clause 2) [*Testa v. Katt*, 330 US 386; 67 S. Ct. 810 (1947)].

The Defendant Municipality has willfully and wantonly refused to comply and clearly states that its zoning amendments are the supreme authority, to which I disagree and seek this Honorable Court's determination and clarification, as its affect upon "Police Power" and Public Policy are a nationwide issue. Cite: *Huntington v. City of New York.* 118 FED 683 @ 686 (S.D. NY. 1902) 193 U.S. 441, 24 S. Ct. 505 (1904).

By amendment in 1953, the Defendant Town's arbitrary and irrational classification restricted the pre-existing use of residential, multi-family structures- then existing occuppyable – to "warmer months" of the year. This is void *Lawton vs. Steele*, 152 U.S. 133 @ 137, 14 S. CT. 499, 501 (1894), *Goldblatt vs. Town of Hempstead*, 369 us 590 @ 595, 82 S.CT 987 @ 998 (1962) and unacceptable for various reasons, besides the Privileges and

Immunities Clause Article IV; and the Equal Protection Clause of the Fourteenth (14th) Amendment through the (5th) Fifth Amendment and the right to pursue a vocational calling between Local and Non-Local residents, which I state below: cite *Bolling v. Sharpe,* 347 U.S, 497 (1954).

1. Vagueness (facially unconstitutional and discriminatory, as applied). *Lambert vs. California,* 355 U.S, 225, 78 S. CT. 240 (1957). This suspect classification does not relate to a legitimate or functional end of government in this application. It is a "meddlesome interference with individual rights and violates due process".

2. Contrary to "vested property" by Common Law and Fundamental Real Property State Law, "The Supremacy Clause and the Contract Clause."

3. Violates Eminent Domain and Just Compensation and is a *defacto* taking. *Boston Chamber of Commerce v. Boston,* 217 U.S. 1989 @ 195, 305 S. Ct. 459-60 (1910) and *Super-Power v. Sommers,* 352 Ill. 610, @ 618; 186 N.E. 476 @ 479 (1933).

4. Unlawfully restrains a permitted zoning, conforming, investment use by developing residences for rental by the public and in compliance with 1928 Zoning Ordinance and The Federal Public Accommodations Acts of 1964 and 1968. Cite: *Eaton v. Sweeny,* 257 N.Y. 176 (1931), also, *Rodgers v.*

Tarrytown, 3023 N.Y 115 (1951), also *Shepard v. Skaneateles*, 300 N.Y. 1155 (1949).

I firmly believe that actions of any governmental agency (Zoning Board of Appeals) give rise to the State action for the purpose of Constitutional limits – be it an administrative agency or an independent political subdivision (the new Village of Woodbury), fundamental and constitutional restrictions are invoked by their irrational, arbitrary, and invidious actions, thereby requiring strict scrutiny standard of review. *Arlington v. Metropolitan*, 429 U.S. 252, 97 S. Ct. 555.

Also in 1961, the Defendant Municipality violated the N.Y. and Federal Statutes of Preemption; therefore, State and Federal Law – as they relate to the *Res Judicata* and Collateral or Judicial *Estoppel* effect of the 1964 Judicial Determination (21a) 83 Am. Jur. 2– Zoning and Planning; Sec 822 Note # 50, 53, 56, 59 and 60 citations and this Courts upholding should end this inquiry as attached on substantive Due Process Principles. As most ably stated in *Lingle v. Chevron*, 543 US 1118, 125 S. Ct. 1105 (1/24/05), and *Nectow v. Cambridge*, 277 U.S. 183 @188; 48 S.Ct. 447 @448 (1928).

As an honorably serviced, New York City born and raised Jew, I seem to have spent my life resisting oppression, breach of duty, despotism and tyranny, both in the military of this nation and forty plus years as a *pro se* litigant, and now hoping to be

heard by this Honorable Tribunal enriched by the voices of past patriots and founding fathers.

> "The Government's action is lawful solely because it assumes a duty, imposed by the constitution, to provide just compensation." (Ninth Circuit Court of Appeals) (1997-1999). The Ninth Circuit seems to be in conflict with the Second Circuit (54a) and (55a).

I thank you for your time and indulgence in my quest.

Conclusion

For all of the foregoing reasons, the petitioner's Writ of Certiorari should be granted along with any further relief as justice may deem necessary and proper.

Dated: March 6, 2008
Valley Cottage, New York

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RUBIN STERNGASS,

Plaintiff,

-against-

TOWN OF WOODBURY and its Supervisor, SHEILA H. CONROY,

Defendant.

----------X

05 Civil 8786 (CM)
JUDGMENT

Whereas the above entitled action having been assigned to the Honorable Colleen McMahon, U.S.D.J., and the Court thereafter on May 18, 2006, having handed down a DECISION AND ORDER DISMISSING COMPLAINT (Doc. # 23) dismissing all claims in the complaint with prejudice and with costs to the defendant, it is,

ORDERED, ADJUDGED AND DECREED: that all claims in the complaint is dismissed with prejudice and with costs to the defendants and the case is hereby closed.

DATED: White Plains, N.Y.
May 22, 2006

s/ J. Michael McMahon
J. Michael McMahon, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

RUBIN STERNGASS,

Plaintiff,

TOWN OF WOODBURY and its Supervisor, SHEILA H. CONROY,

Defendant.

----------X

05 Civ. 8786 (CM)

DECISION AND ORDER DISMISSING COMPLAINT

McMahon, J.:

The parties having complied with the court's March 13, 2006 directing the court is now prepared to rule on defendants' motion for summary judgment dismissing the complaint.[1]

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[1] The procedural history of this action is somewhat convoluted. Originally, defendant Conroy moved to dismiss on the ground of qualified immunity. Her moving papers alleged that she had committed no constitutional violation, so the court recharacterized her motion as one for summary judgment on the merits and asked for further briefing. In response, both defendants moved for summary judgment, but on defective papers. Moreover, defendants' principal argument was that this court lacked jurisdiction, which was manifestly not the case. The March 13 order referred to in the first line of this decision declined to dismiss on the ground of lack of subject matter jurisdiction, advised plaintiff of his responsibilities under Fed. R, Civ. P. 56, and directed yet more briefing on the application for summary judgment - this time directed to the federal claims that plaintiff could possibly be pleading. The parties have (substantially) complied with that order.

The motion is granted.

For a statement of facts, the reader is referred to the March 13 order, familiarity with which is assumed.

Standards Applied

Under Federal Rule of Civil Procedure 56(c), the court will grant summary judgment if the evidence offered shows that there is no genuine issue as to any material fact and that the movants are entitled to judgment as a matter of law. See Celotex Corp. v. Catrett 477 U.S. 317, 106 S.Ct. 2548 (1986). Furthermore, where a plaintiff cannot establish an essential element of his claim; "there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Id, at 322-33.

On a motion for summary judgment, the court views the record in the light most favorable to the; non-movants and resolves all ambiguities and draws all reasonable inferences against the movants. See United States v. Diebold, Inc., 369 U.S. 654, 655, 82 S.Ct 993, 994 (1962); Donahue v. Windsor Locks Bd. of Fire Commn'rs, 834 F,2d 54,57 (2d Cir. 1987).

The pro se plaintiff has been provided, through the medium of the court's March 13 order, with directions about what he must prove in order to defeat the motion.

Before turning to a discussion of the various claims that may be asserted in the complaint, I must discuss some pertinent elements of the Zoning Law of the State of New York. I do so because, as defendants observe, plaintiff is under considerable misapprehension about that law.

Under the 1928 Zoning Code of the Town of Woodbury, plaintiff had the right to use his property as a summer bungalow colony. Woodbury has amended its Zoning Code several times since than, most recently in 1990, when the area was rezoned from an 'R-1-B' District to an R-2A District: single family residential with a two acre minimum per single family house. Since at least 1976, the use of the land as a bungalow colony ceased to be an "of right" use for the property under the Zoning Code. Division of Woodbury Zoning Board of Appeals dated May 26, 1976, Def. Am. Stmt. of Material Facts, Ex, A at 4.

However, an existing non-conforming use may continue after the enactment of a zoning ordinance that would render the same activity illegal if it were a new use. Indeed, consistent with the United States Constitution, it must be allowed to continue. But non-conforming Uses (1) cannot be expanded; (2) cannot be abandoned; (3) cannot be changed to another use that does not conform to the zoning code in existence at the; time of the proposed change in use.

Thus, plaintiff had a continuing right to use his property as a summer bungalow colony - even

though no one could buy the property next to his and start a summer bungalow colony. But plaintiff could not expand the scope of the use (from the warmer months to the entire year, for example); he could not stop using the property as a bungalow colony and maintain the right to a non-conforming use; and he could not change the use of the property to my use that was forbidden for that property under the 1990 Zoning Ordinance.[2] Put otherwise, the fact that plaintiff was permitted to retain the non-conforming me permitted by the 1928 Zoning Code (which was in effect when he purchased the property in 1971) does not mean that the 1928 Zoning Code is the ordinance applicable to the property. His only right is to continue a preexisting non-conforming use, without expansion or change.

The fact that plaintiff's property was rezoned does not violate the law. As the Second Circuit discussed in Greene v. Town of Blooming Grove, 879 F.2d 1061, 1065 (2d Cir. 1989), under New York State law, a landowner has no vested interest in retaining the existing classification of his property. He does have an interest in being allowed to continue an existing use when the classification of the property changes - that is, he has a vested right to continue the particular non-conforming use that existed on the property when it was rezoned. He has no other rights in respect of his pre-existing non-conforming use,

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[2] Defendants suggest that the use of the property as a bungalow colony may in fact have been abandoned. It is not necessary for the court to reach this question of fact.

Plaintiff seems to believe that because he: enjoys a right to maintain one particular nonconforming use after the passage of the 1990 Zoning Ordinance, he can use his property as he sees fit. As a matter of law, he is wrong. He can continue to run a bungalow colony. He can do absolutely nothing else with his property except build single family houses on it at a rate of one house per two acres - unless the Town of Woodbury grants him a variance.

With this in mind, we turn to the claims that can be gleaned from the factual pleadings in the pro se complaint.

1. Any Takings (Fifth Amendment) Claim Must Be Dismissed.

The first potential federal cause of action suggested by the facts pleaded was a claim that plaintiffs property had been "taken" from him without just compensation in violation of his lights under the Fifth Amendment to the United States Constitution (regulatory takings), because plaintiff has been prevented from developing the property as he wishes.

The undisputed facts in the record indicate that plaintiff has never applied to the Town's Board of Zoning Appeals for a variance to permit him (or anyone who might purchase the subject property from him) to construct a multi-family residential or trailer park project. Indeed, the record reveals that plaintiff has been invited to file far a variance. But because of his steadfast belief that he has "rights"

under the 1928 Zoning Code to develop his property as he sees fit in accordance with that long-superceded law, he refuses to do so. In his various appearances before Woodbury's Planning Board, plaintiff has consistently maintained that the only law applicable to his property is the 1928 Zoning Ordinance, which would permit him to develop his property into multi-family housing. He takes the position that he does not need any variance, and from this position he will not be moved.

As a matter of law, plaintiff is wrong. He does need a variance in order to develop his property with multi-family residences or trailers, which is a new (not existing) non-conforming use that is not permitted by the current zoning code. As noted by the Town Supervisor in her original moving affidavit, plaintiffs March 29, 2005 letter seeking a special permit to allow the erection of senior citizen housing should have been directed to the Zoning Board of Appeals, but that was never done. The Town did ask the Planning Board to review the project, without a variance, it could act only in an advisory capacity. It is this "inaction" that appears to have precipitated this lawsuit.

Plaintiff's Fifth Amendment takings claim must be dismissed because his failure to apply for permission (a variance) to do what he wishes means that his claim is not ripe for adjudication. William County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S., 172 (1985). Before a court can entertain a regulatory takings claim, the plaintiff must demonstrate that "the government

entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." at 186, The plaintiff must also allege that he has sought just compensation by resort to the procedures set forth in state law. Id. at 194.

Here, plaintiff has not received any final decision from the government entity charged with implementing the Town's Zoning Ordinance - the Zoning Board of Appeals - because he has not even bothered to apply for a ruling. Nor has he applied to the Town Board for a change of zone. His claim must therefore be dismissed as unripe. Suitum v. Tahoe Regional Planning Authority, 520 U.S. 725 (1997); Murphy v. New Milford Zoning Comm'n, 402 F. 3d 342, 347-48 (2d Cir. 2005) .

To the extent that plaintiff might be suggesting that changing the classification of his property in 1990 worked a regulatory taking, he is wrong as a matter of law. It does not work a taking of property to change a classification in a manner that makes it illegal to develop the land to its highest and best use. Even zoning changes that substantially diminish the value of land does not rise to the level of a constitutional taking. Rather, the plaintiff must be deprived of all use of his property for it to be "taken" in the Fifth Amendment constitutional sense. Dean Tarry Corp. v. Friedlander, 650 F. Supp. 1544, 1550 (S.D.N.Y. 1987), and cases cited.

Moreover, the Zoning Code was passed in 1990. If plaintiff did have a takings claim arising out of the rezoning (which he does not), it is far too late in the day for him to assert it.

2. Plaintiffs Due Process Claim Not be Dismissed .

The next claim that the pro se plaintiff might conceivably be trying to assert is a claim that he was deprived of his property without due process of law. This claim, too, lacks legal merit.

Because, as noted above, a landowner in New York has no right to a continuation of the zoning classification applicable to his property, Ellentuck v. Klein, 570 F.2d 414,429 (2d Cir. 1978), a change in a zoning ordinance that alters the classification of a parcel does not "deprive" the landowner of his property. Only if the Town had attempted to prevent plaintiff from running a bungalow colony - the preexisting use - on the rezoned property would he be "deprived" of his property by virtue of the rezoning. A zoning ordinance cannot prohibit a use to which the property is lawfully devoted at the time the ordinance is enacted, Syracuse Agregate Corp. v. Weise, 51 N.Y.2d 278, 284 (1980). But that is not the case here. No one in Woodbury has suggested that Mr. Sterngass (or anyone who might purchase his property) cannot operate a bungalow colony on the subject property during the warm weather months. Of course, that is not what plaintiff wants to do. But his desire is not germane to the inquiry.

3. Plaintiffs Equal Protection Claim Must Be Dismissed.

If plaintiff here contends that he was denied equal protection because of the Town's refusal to acknowledge what he believes is his right to develop his property for multi-family housing, he is on the wrong track. In order to maintain a claim for an equal protection violation, plaintiff must establish that, "[He] has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S. Ct. 1073 (2000). Where, as here, the plaintiff is alleging what is colloquially known as a "class of one" claim, he cannot prevail unless, "the level of similarity between plaintiffs and the persons with whom they compare themselves must be extremely high." Neilson v. D'Angelis, 409 F. 3d 100, 104 (2d Cir. 2005). In fact, the plaintiff and his comparators must be "prima facie identical." Id. at 105.

Plaintiff has not identified any other person who is similarly situated to him who has been allowed to do what he is not being allowed to do. That is, plaintiff has not identified any person who, without applying for a variance, was allowed to change and expand a pre-existing non-conforming use in order to develop his property in a way that was not authorized by the then existing Zoning Ordinance. Therefore, the evidence does not make, out an equal protection claim.

4. Plaintiff's Religious Discrimination Claim Must Be Dismissed.

The one federal claim that plaintiff (who is Jewish) clearly asserts is that the Town's refusal to let his property be developed for multi-family housing is grounded in religious discrimination - specifically, discrimination against Hasidic Jews, whom he presumes will be the users of the development he would like to see on his property.

In his response to the revised motion papers submitted by defendants after the court's March 13 order, Mr. Sterngass states that the taking of his "vested" property rights has "the undertone of religious oppression by enforcement of an invalid zoning amendment from 1953 to 1990." Plaintiff has consistently taken the position that a decision by the Town in 1953 (before he purchased the property) to limit the use of the parcel as a bungalow colony to "warmer months" was designed to curtail the growing influx of Hasidic Jews into the Town. He also contends that the Town's refusal in 1979 to rezone his property for multi-family residential was motivated by religious discrimination, He bases this latter contention, in whole or in part, on a statement made by a resident of the Town at a Planning Board meeting he attended in 1979.

Any claim about actions taken or not taken by the Town in 1953 or in 1979 are of course barred by the three year statute of limitations applicable to a claim under 42 U.S.§1983. Any claim that the Town's failure to redesignate plaintiffs property was

motivated by religious discrimination should have been the subject of a lawsuit many years ago. [3]

Plaintiff - having been advised that he was required to offer concrete evidence to support his claim - offers no evidence that the Planning Board's recent refusal to approve a change in use of his property to a senior citizen housing project, in the absence of a variance from the Zoning Board of Appeals, was motivated by any impermissible anti-Semitism. For that reason, defendants are entitled to summary judgment dismissing plaintiffs claim of religious discrimination.

In short, this Court perceives no cognizable claim arising under federal law in the complaint. All federal claims are dismissed with prejudice.

5. Claim for Declaratory Relief Under State Law.

The principal claim asserted by plaintiff is for declaratory relief - specifically, for a declaration that his property is subject to the 1928 Zoning Code. (See March 13, 2006 Order at p. 3). While this claim arises entirely under state law, this court (contrary to its earlier inclination) has decided to exercise supplemental jurisdiction over the claims for declaratory relief pursuant to 28 U.S.C § 1367, and to dismiss the claim because, for the reasons stated

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[3] The Court has already dismissed as time-bard, any possible claim that the 1979 decision by the Town Board constituted a taking or violated plaintiff's due process rights. March 13, 2006 order at p. 4

above, plaintiff has no right to the relief he requests. His property IS subject to the 1990 Zoning Ordinance. He has NO vested right to change the use of the property in the manner he proposes, or to develop the property into a trailer park, multi-family housing or a senior citizens home. He is certainly free to pursue such projects, but the first item on his agenda would be to apply to the Zoning Board of Appeals for a variance.

This constitutes the decision and order of the Court. All claims in the complaint are dismissed with prejudice and with costs to the defendants. The Clerk of the Court is directed to close the file.

Dated: May 18, 2006

U.S.D.J.

BY FIRST CLASS MAIL TO PLAINTIFF PRO SE
BY FIRST CLASS MAIL TO COUNSEL FOR DEFENDANTS

906-3612-cv
Sterngass v. Town of Woodbury

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT, CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL, UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP:WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST

INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 17th day of October, two thousand and seven.

PRESENT:

HON. JON O. NEWMAN,
HON. SONIA SOTOMAYOR,
HON. RICHARD C. WESLEY,
Circuit Judges.

Rubin Sterngass,

Plaintiff-Appellant.

v.

Town of Woodbury, Sheila H. Conroy,

Defendants-Appellants.

No. 06-3612-cv

For Plaintiff-Appellant:

RUBIN STERNGASS, *pro se,*
Valley Cottage, NY

For Defendants-Appellees:

RICHARD LIBERTH
(David W. Silverman,
Granik Silverman & Hekker,
New York, New York,
on the brief.)

Tarshis, Catania, Liberth Mahon &
Milligram, PLLC
Newburgh, NY

UPON. DUE CONSIDERATION, of this appeal from a judgment entered in the United States District Court for the Southern District of *New* York (McMahon, J.), it is hereby ORDERED, ADJUDGED AND DECREED that the judgment of the district court is AFFIRMED.

Appellant Rubin Sterngass, appeals from a May 23, 2006 judgment of the United States District Court for the Southern District of New York (McMahon, J.) granting summary judgment to Appellees, and dismissing all Appellant's claims in his complaint. We presume the parties' familiarity with the facts and procedural history of the case and the arguments on appeal.

This Court reviews a district court's grant of summary judgment *de novo*. *New York v. Nat'l Serv. Indus. Inc.*, 460 F.3d 201,206 (2d Cir, 2006). "[S]ummary judgment *is* appropriate where there exists no genuine issue of material fact and, based on the undisputed facts, the moving party is entitled

to judgment as a matter of law," *D'Amico v. City of New York,* 132 F.3d 145, 149 (2d cir. 1998) *see also* Fed. R. Civ. P. 56(c). In determining whether there is a genuine issue of material fact, we must resolve all ambiguities, and draw all inferences, against the moving party. *"United* States *v. Diebold,* 369 US. 654, 655 (1962); *Donahue v. Windsor Locks Bd. of Fire Comm'rs,* 834 F.2d 54, 57 (2nd Cir. 1987). Mere speculation and conjecture are insufficient to avoid *summary* judgment. *Western World Ins. Co. v. Stack Oil Inc,* 922 F2d 118, 121 (2d Cir. 1990),

Having reviewed the record, we agree with the district court that Appellant misapprehend the law. For the reasons stated by the district court, we conclude that there are no genuine issues of material fact warranting a trial on Appellant's claims, and such claims are without merit. Therefore, we hold that Appellant's claims were properly dismissed.

Accordingly, the judgment of the district court is affirmed.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

s/ Lucille Carr

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE, NEW YORK, NY 10007

Catherine O'Hagan Wolf
CLERK OF THE COURT

Date: 11/07/07
Docket No: 06-3612-cv
Short Title: Sterngass v. Town of Woodbury
DC Docket Number: 05-cv-8786
DC: SDNY (White Plains)
DC Judge: Honorable Colleen McMahon

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of October, two thousand seven.

Present:

Hon. Jon O. Newman,
Hon Sonia Sotomayer,
Hon. Richard C. Wesley,
CIRCUIT JUDGES.

Sterngrass v. Town of Woodbury

A petition for panel rehearing having been filed herein by Appellant Rubin Sterngrass,

Upon consideration thereof, it is

ORDERED that said petition be and it hereby is **DENIED.**

For the Court:
Catherine O'Hagan Wolfe, Clerk
By: s/ Judy
Motion Staff Attorney

Nov - 7 – 2007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Rubin Sterngass,
Plaintiff, Pro se,

against –

Town of Woodbury and Its Supervisor, Sheilah H. Conroy,
Defendants.

Non-ECF: Case
05 Civ 8786 (CM)

NOTICE OF APPEAL

Notice is hereby given that Rubin Sterngass, plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Second Circuit from an order dismissing my complaint and granting defendants' motion for summary judgment, entered in this action on the 18th day of May, 2006 from each and every part thereof, including:

1. New York State Constitution (Article 1, Sections 2-6).
2. United States Constitution [Fifth (5th) and Fourteenth (14th) Amendments] as well as 28 USC, No. 1331.
3. Declaratory Judgment as to the validity of the Town of Woodbury's Amendatory Zoning Ordinance, as applied, in violation of constitutional constraints.

Zoning Board of Appeals to the
Town of Woodsbury

In the Matter of the Appeal of

ABRAHAM MAISEL

Dated April 11, 1964 from the denial
By the Zoning and Building Inspector
Of an application of the same date for
A building permit and certificate of
Occupancy for a swimming pool in an
R-1-B Zone and for a variance to permit
An extension of an non-conforming use.

DECISION

Upon reading and filing notice of appeal dated April 11, 1964 by Abraham Waisel from the denial by the Zoning and Building Inspector of his application of the same date for a building permit and certificate of occupancy for a swimming pool to be constructed on a plot of twenty acres in an R-1-B zone used as a summer bungalow colony and for a variance to permit an extension of such non-conforming use, and upon notice of hearing dated April 23, 1964 duly published and the matter having come on to be heard April 30, 1964 and having been adjourned on that date to May 21, 1964, and after hearing Abraham Waisel in support of the application and Vincent M. Brennan, his attorney, and after hearing other persons present consisting of owners of neighboring property all of whom favored

the granting of a variance and due deliberation having been had, the Board finds and decides as follows:

1. The applicant's property is situated in a R-S-C residential zone and is a valid non-conforming use existing at the adoption of the zoning ordinance and used continuously since that time as a summer bungalow colony. Adjacent to the applicant's property are other summer bungalow colonies in competition with the applicant's business. At various times in 1953, 1954 and 1957 the applicant has received permits to alter buildings or erect new buildings; thus, extending the non-conforming use, such permits having been granted by the Zoning and Building Inspector in the mistaken belief that the property was situated in an R-S-C zone. We find no evidence that the applicant made any misrepresentation to the Zoning and Building Inspector and believe that he also acted under a mistake as to the zone in which his property was situated. There is evidence that the applicant cannot successfully continue his business without construction a swimming pool in order to compete with similar businesses. Since a summer bungalow colony already exists on the applicant's property, the addition of a swimming pool will not injure neighboring property and enhance the neighborhood. Nevertheless, the erection of a swimming pool is an extension of a non-conforming use which is prohibited by the ordinance. We would, therefore, feel compelled to deny a variance for the extension of the non-conforming use were it not for the fact that the Zoning and Building Inspector on several

previous occasions has permitted such extension so that the applicant has acquired a vested interest in improvements to his property with the permission of the responsible official of the town. In the absence of damage to the neighborhood such vested interest of the applicant should be protected and for this purpose a variance is hereby granted and the Zoning and Building Inspector is directed to grant the application for a building permit and certificate of occupancy upon compliance with the requirements therefore.

Zoning Board of Appeals to the
Town Of Woodbury

s/_____

s/_____

Quoted in part (from Prof. Daniel R. Mandelker) – Washington University of Law "...while a holding of un-constitutionality would lift the Zoning Restriction from the affected parcel, the grant of a use variance has much the some result...the grant of a use variance for all practical purposes will have the same effect". "All that is prevented is possible damage to the entire ordinance".

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David W. Silverman, Esq.
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March 14, 2006

BY FAX ONLY

The Honorable Colleen McMahon, U.S.D.J.
United States District Court
Southern District of New York
300 Quarropas Street, Room 533
White Plains, NY 10601

Re: Sterngass v. Town of Woodbury, *et ano*
05 Civ. 8786 (CM)

Dear Judge McMahon:

Reference is made to the Court's order in the above referenced matter which was filed on March 14, 2006. The order requires a brief and evidence from the defendants that addresses "in a logical and coherent (scattershot) fashion, each of the claims that [Your Honor] ha[s] discerned in the complaint." Not wishing to burden the Court with additional documentation which may not be responsive to Your Honor's order, I respectfully request the Court's guidance as to whether the undersigned, as counsel

for defendants, is to again review the complaint with respect to any set of facts which might be construed as a claim and address those claims in a Rule 56.1 statement or whether a delineation of the claims discerned by the Court might be provided in order for the parties to properly comply with Your Honor's directives.

Although Your Honor's rules state that copies of all correspondence directed to the Court must simultaneously be faxed or delivered to all counsel of record, we are constrained to mailing a copy of this letter to plaintiff *pro se* inasmuch as we only have a mailing address for plaintiff.

Respectfully yours,

s/ _____
David W. Silverman

DWS/eo

cc: Rubin Sterngass, *pro se* (by mail only)

ZONING ORDINANCE OF 1928
TOWN OF WOODBURY, N.Y.

An ordinance regulating and restricting the character of buildings and other structures, the density of populations, and the location and use of buildings, structures and land for trade, industry, residence, and other purposes in given areas and establishing the boundaries of districts for the said purposes and providing penalties for the violation of its provisions in the Town of Woodbury, County of Orange, State of New York.

The Town of Woodbury by its Town Board, in accordance with the power and authority to it granted by Article 17-C of the Town Law and by various other provisions of said law, does hereby ordain and enact as follows:

Section 1. – DISTRICTS. For the purpose of this ordinance the Town of Woodbury in the County of Orange, State of New York is hereby divided into five districts or zones.

District No. 1 is bounded and described as follows: All that portion of the Town of Woodbury bounded and described as follows: BEGINNING at a point in the southerly line of said Town in the line of the Town of Tuxedo which point is 400 feet distant in an easterly direction from the most easterly line of the present existing right of way of Erie Railroad Company; runs thence in a northerly direction and parallel to and 400 feet east of the easterly line of the right of way of the main line of the Erie Railway Company and of the Newburgh Branch of the Erie Railroad Company; sometimes known as Erie and

Jersey Railway Company, to a point in the middle of the State Highway running from Central Valley to West Point; runs thence along the middle of said highway in an easterly direction to its intersection with the line of lands of Charles W. Pilgrim; Pilgrim in an easterly, a northerly, a westerly and a southerly direction to the middle line of a street leading from Central Valley Railroad Station to Falkirk known as Valley Avenue or Falkirk Avenue; runs thence along the middle of said Valley Avenue in a westerly direction to a point which is 400 feet distant easterly measured at right angles from the easterly right of way line of the said Newburgh Branch of the Erie Railroad Company, runs thence parallel with said easterly line of said right of way and 400 feet distant therefrom in a northerly direction until it reaches a point which is 300 feet distant in an easterly direction measured at right angles form the easterly right of way line of the State Highway leading in a northerly direction from Highland Mills to Newburgh; runs thence in a northerly direction and parallel to said State Highway and 300 feet distant therefrom measured at right angles in an easterly direction until it intersects the line of the Town of Cornwall; runs thence in an easterly direction along the line of the Town of Cornwall to the Town of Highlands and thence in a southerly and thence in an easterly direction along the Town of Highlands to the Rockland County line and thence along the Rockland County line in a southwesterly direction to the Town of Tuxedo and thence in a northwesterly and thence in a southwesterly and thence in a northwesterly

direction along the line of the Town of Tuxedo to the place of beginning all within said bounds.

District No. 2 is bounded and described as follows: ALL that portion of the Town of Woodbury bounded and described as follows: BEGINNING at a point in the northerly line of said Town in the line of the Town of Cornwall which point is 400 feet distant in a westerly direction from the most westerly line of the present existing right of way of the branch of the Erie Railroad Company known as the Erie and Jersey Railway Company; runs thence in a southerly direction, parallel to and 400 feet distant westerly measured at right angles from the westerly line of the right of way of said Erie and Jersey Railway Company until it reaches a point which is 300 feet distant in a westerly direction measured at right angles from the right of way line of the State Highway leading in a northerly direction from Highland Mills to Newburgh; runs thence in a southwesterly direction, parallel to said State Highway and 300 feet distant therefrom measured at right angles in a westerly direction until it reaches the middle of the State Highway leading from Highland Mills in a westerly direction to the Village of Monroe; runs thence in a westerly direction along the middle of said highway until it intersects the easterly line of lands of Jewish National Workers' Alliance Institute, Inc.; runs thence along the easterly line of lands of said Jewish National Workers; Alliance Institute, Inc. and the easterly and northerly line of the farm heretofore known as the Hudson Farm now occupied by Camp Gregory, in a northerly and westerly direction until it strikes what is known as the Mountain road which

leads from the Highland Mills Church by the shortest route up the mountain and southerly to Cromwell Lake; runs thence along the middle of said highway in a southwesterly direction a distance of three-fourths of a mile more or less to a point which is distant in a northerly direction 300 feet from the intersection of said highway with the highway which leads in a westerly direction past what is known as the Seven Springs Mountain House to Washingtonville; runs thence in a westerly direction 300 feet distant in a northerly direction measured at right angles from said last mentioned highway and parallel thereto until it intersects the easterly line of the Town of Blooming Grove; runs thence in a northeasterly direction along the easterly line of the Town of Blooming Grove until it intersects the line of the Town of Cornwall and thence in a southeasterly direction along the line of the Town of Cornwall to the point of beginning. Containing all within said bounds be the same more or less.

District No. 3 is bounded and described as follows: ALL that portion of the Town of Woodbury bounded and described as follows: BEGINNING at a point in the easterly line of the Town of Woodbury in the line of the Town of Monroe which point is 300 feet northerly measured at right angles from the northerly line of the right of way of the State Highway leading from Harriman to Highland Mills; runs thence in easterly and northerly direction parallel to said State Highway and 300 feet distant therefrom measured at right angles until it intersects the middle of the State Highway which leads in a westerly direction from Highland Mills to the Village of Monroe; runs thence along the middle

of said highway in a westerly direction until it intersects the line of the Town of Monroe; runs thence in a southerly direction along said Town line to the point or place of beginning. Containing all within said bounds be the same more or less.

District No. 4 – is bounded an described as follows: ALL that portion of the Town of Woodbury bounded on the north by the above described District No. 2 on the west by the Town of Blooming Grove and the Town of Monroe, on the south by the above described District No. 3 and on the east by the above described District No. 3 and the above described District No. 2. Containing all within said bounds be the same more or less.

District No. 5 is bounded and described as follows: ALL that portion of the Town of Woodbury bounded on the north by the Town of Cornwall, on the east by the above described District No. 1, on the south by the Town of Tuxedo on the west by the Town of Monroe, the above described District No. 3 and the above described District No. 2. Containing all within said bounds be the same more or less.

Section 2 – DEFINITIONS. Certain words in this ordinance are defined for the purpose thereof as follows:

(a) A building "fireproof" or "fireproof throughout" is one the walls of which are constructed of brick, stone, iron or other hard incombustible material, and in which there are no wood beams or lintels, or wooden doors leading to any public hall and in which the floors, roofs, stair halls and public halls are built entirely of brick, stone, iron or other hard incombustible material and in which no woodwork or other inflammable material is used in

any of the partitions, furrings or ceilings. But this definition shall not be construed as prohibiting elsewhere than in the stair halls or entrance halls, the use of wooden flooring on top of the fireproof floors or the use of wooden sleepers, nor as prohibiting handrails in the stair halls.

(b) A "residence building" is a building used in whole or in part for residence purposes.

(c) Words used in the present tense include the future; the singular number includes the plural and the plural singular; the word "lot" includes the word 'plot', the word "building" includes the word "structure"; the word "occupied" includes the words "designed or intended to be occupied"; the word "used" includes the words "arranged, designed, or intended to be used"; the word "shall" is always mandatory.

(d) A "family" is any number of individuals living on the premises as a single housekeeping unit.

Section 3. – FIREPROOF BUILDINGS.

No residence building for more than two families or building in which the members of more than two families shall reside, or hotel, lodging house, boarding house, hospital or other building in which people shall reside shall hereafter be built either in District No. 1, District No. 2, District No. 3, District No. 4 or District No. 5 unless the same shall be fireproof throughout, except however that this Section shall not be deemed to apply to buildings which have been or may hereafter be erected by Commissioners of the Palisades Park within the lines of the State Park by it owned and maintained.

Section 4. – DISTRICT NO. 1 USE PROVISIONS.

In District No. 1 no building or premises shall be used for other than one or more of the following specified purposes:

(a) A dwelling detached or semi-detached, for one or two families, or for one or two housekeeping units, or for the family or one housekeeping unit in each half of a semi-detached building.

(b) Clubs, lodges, social and community center buildings excepting those the chief activity of which is a service customarily carried on as a gainful business.

(c) Playgrounds and parks, with such buildings in any public parks as may be necessary for park purposes.

(d) Schools and municipal buildings, provided there is no display or advertising on the premises.

(e) Churches and other places of worship, parish houses, Sunday School buildings.

(f) Farms, stables, truck gardens, nurseries or greenhouses.

(g) Sign boards and refreshment stands located within 300 feet of a State of County highway.

(h) Accessory uses, customary or incident to the above uses and located on the same lot with them.

Section 5. – DISTRICTS NOS. 2 AND 3 USE PROVISIONS.

Within Districts Nos. 2 and 3 no building or premises shall be used for other than one or more of the uses specified above in Section No. 4 as permitted in District No. 1 and in addition thereto for:

(a) Boarding houses.

Section 6. – HOSPITALS, SANATORIA AND CORRECTIONAL INSTITUTIONS.

No hospitals or sanatoria for the treatment of either contagious or non-contagious diseases, dispensaries or correctional institutions shall be established, built, or maintained in either District No. 1 or District No. 2 or District No. 3 or District No. 4, and no hospitals for the treatment of contagious diseases or tuberculosis shall be established, built or maintained in District No. 5.

Section 7. – INTERPRETATION.

In their interpretation and application the provisions of this ordinance shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provision of law; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises than are imposed or required by such existing provision of law, or by such easements, covenants or agreements, the provisions of this ordinance shall control. Wherever the provisions of any other statute, ordinance or regulations in force after this ordinance takes effect impose more stringent restrictions or requirements the provisions of such statute, ordinance or regulation shall govern.

Section 8. – ENFORCEMENT.

This ordinance shall be enforced by the Supervisor of the Town.

Section 9. – BOARD OF APPEALS.

(a) The Town Board shall appoint a Board of Appeals consisting of five members. The method of appointment of, and methods of procedure of such Board of Appeals shall be as prescribed in Section 349-U of the town Law, and the said Board shall have all of the powers and duties now authorized by the said Section.

Such Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Supervisor under this ordinance. Such Board of Appeals shall also hear and decide all matters referred to it or upon which it is required to pass by ordinance.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance, the Board of Appeals shall have the power in passing upon appeals to vary or modify any of the rules, regulations or provisions thereof relating to the construction, structural changes or alterations of buildings and relative to the use thereof so that the spirit of this ordinance shall be observed, public safety secured and substantial justice done, and this may permit, among other matters:

(1) The extension of an existing non-conforming building or the erection of a supplementary building on the same lot in a manner which shall conform to the existing building although not according to the terms of this ordinance.

(2) The temporary use of any building or structure for a purpose not permitted by this ordinance where in the judgment of said Board such use will not interfere with or injuriously affect the remaining property in the said zone.

Section 10 – VIOLATIONS AND PENALTIES. For any and every violation of the provisions of this ordinance, the owner, agent or contractor of a building or premises where such violations have been committed or shall exist, and the owner, general agent or contractor, lessee or tenant in which part of such violation has been committed or shall exist, and the general agent builder, contractor or any other person who commits, takes part or assists in such violations or who maintains any building or premises in which any such violations shall exist, shall be guilty of a misdemeanor, and shall be liable to a fine which shall not exceed $50.00 or to imprisonment not exceeding 50 days or to both such fine and imprisonment and for each and every violation and for each and every day that such violation continues to be subject to a penalty in the sum of $100 to be recovered by the Town in a civil action.

Section 11- AMENDMENTS.

(a) The Town Board may from time to time, on its own motion or on petition, after public notice and hearing, amend, supplement, modify, repeal or change the regulations and districts herein established.

(b) Whenever the owners of fifty percent (50%) or more of the property in any district shall present a petition duly signed and acknowledged to the Town Board requesting an amendment, supplement,

change or repeal of the regulations, prescribed for such district or such part thereof, it shall be the duty of the Town Board to vote upon said petition within 90 days after the filing of the same by the petitioners with the Town Clerk.

(c) In case a protest against such change signed by the owners of twenty percent (20%) or more, either of the area of the land included in such proposed change, or of that directly opposite thereto extending one hundred feet (100') from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of all the members of the Town Board.

Section 12 – VALIDITY. The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof. It is hereby declared to be the intention of the Town Board to enact each and every section, paragraph, clause or phrase of this ordinance irrespective of the enactment of every other section, paragraph, clause or phrase herein contained.

Section 13 – TITLE OF ORDINANCE. This ordinance shall be known and referred to as the 1928 Zoning Ordinance of the Town of Woodbury, N.Y.

Section 14 – WHEN TO TAKE EFFECT. This ordinance shall take effect immediately.

State of New York
County of Orange ss:
Town of Woodbury

I, Clarence E. Fitch, Town Clerk of the Town of Woodbury, County of Orange, State of New York, do hereby certify that the foregoing is a true copy of any ordinance which was duly adopted by the Town Board of the Town of Woodbury, Orange County,

N.Y. at a meeting thereof held on the 16th day of April, 1928, all members being present, as the same appears upon the record and in the said Town and of the whole thereof.

Dated, Highland Mills, N.Y.
April 15, 1928

Clarence E. Fitch,
Town Clerk
Of the Town of Woodbury
Orange County, N.Y.

OFFICE OF THE ZONING AND BUILDING INSPECTOR
TOWN OF WOODBURY, ORANGE COUNTY, NEW YORK
Highland Mills, New York 10930

NOTICE OF VIOLATION OF ZONING AND ORDER TO CEASE SAME

To: Mr. Rubin Sterngass
Address: 67 Ridge Road, Valley Cottage, NY 10989

NOTICE IS HEREBY GIVEN pursuant to Article 16 of the Town Law of the State of New York and Section 153-41 the Zoning Law of the Town of Westbury and relates to the following property in the Town of Woodbury;

That property which you won on Ridge Road known as "Meadowland".

Such property is located in Zoning District R3 as shown on the Zoning Map of the Town of Woodbury as last amended 1982

Description of Violations:

You are using and maintaining on the above described premises a residence in violation of a previous notice of violation dated May 20, 1975. The current violation is that you are occupying a seasonal dwelling on a year round basis which is not allowed in an R3 Zoning District.

IT IS HEREBY ORDERED that you promptly cease such violation of such Law by taking the following corrective action:

By February 1, 1983, return the single family dwelling to summer use only for a single family.

As provided in Section 268 of the Town Law and Section 153-41 of said Law you are subject to fine and penalty for such violation and each week's continued violation after a service of this notice and ORDER upon you constitutes a separate violation.

Dated: December 1, 1982

s/ _____
Zoning and Building Inspector
Town of Woodbury

ZONING
Chapter 310

Town
of
WOODBURY

www.generalcode.com
72 Hinchey Road
Rochester; New York 14624
November 2004

Zoning Map application prescribed for such district, the Town Board may hold a public hearing on such proposal in the manner prescribed by law unless a public hearing has been held within the prior year on substantially the same proposal.

C. Where the Town Board schedules a hearing for a Zoning Map amendment, it shall notify by mail all owners of real property located in the area of the land included in such proposed Zoning Map change and owners of real property located within 200 feet from the area of the proposed Zoning Map change. A copy of the notice of public hearing shall be mailed to such owners at the addresses shown on the latest assessment roll of the Town of Woodbury.

ARTICLE II
Repealer; Applicability

§ 310-53. Repealer; sign regulations.

A. The Zoning Ordinance of the Town of Woodbury enacted by the Town Board on December 15, 1977, and any and all amendments thereto are hereby repealed, except for those provisions relating to the size, design and location of signs. Such repeal shall not affect or impair any act done, offense committed or right accruing, accrued or acquired or liability, penalty, forfeiture or punishment incurred prior to the time such

repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such repeal had not been effected.

B. With regard to signs, regulations applicable to zoning districts existing prior to the adoption of this chapter shall be applicable to the districts in this chapter in accordance with the chart below, until such time as new sign regulations are adopted.

Existing District	**Sign Regulations Applicable to New District**
R-1	R-3; R-2A; R-1A; R-0.25
R-3	CR; LC
B-1	HB
IB-2	IB; LIO; OP

§310-54. Applicability to rezoned properties.

As of the date of the adoption of this Zoning Chapter, the provisions of the MR Multiple Residence Zone and the PUD Planning Unit Development Zone, as they exist on the last date prior to repeal, shall remain applicable to properties listed below so long as the current use continues or approved plans remain valid:

BURKE MIELE & GOLDEN, LLP
30 Matthews Street
Suite 303A
Post Office Box 216
Goshen, N.Y. 10924
(845) 294-4080
Fax (845) 294-7673

Patrick T. Burke
Robert M. Miele
Richard B. Golden
Michael K. Burke

Phillis A. Ingram
Dennis J. Mahoney
Kelly M. Naughton
F. Michele Cooper
Joseph P. McGlinn

Rockland County Office
100 Washinton Avenue
Suffern, NY 10901
845-357-9500

Reply to:
☒ Orange Co
☐ Rockland Co
Respond to Post Office Box

January 2, 2006

Rubin Sterngass
128 Ridge Road
Valley Cottage, New York 10989

Re: 345 Ridge Road, Highland Mills, New York

Dear Mr. Sterngass:

As attorney for the Village of Woodbury I have been directed by the Mayor and Trustees to respond on their behalf to your Notice of Claim letter dated November 22, 2006. As I understand your Notice of Claim, you are making a claim against the village of Woodbury for your inability to obtain certain land

use approvals concerning your property referenced above.

In accordance with the New York State Village Law concerning the incorporation of a new Village, the Town of Woodbury is presently providing the services and functions of the Building Department, the Planning Board and the Zoning Board of Appeals for the Village until on or about June 1, 2007, unless and until the new Village decides to perform such services and functions prior to that time. Consequently, the Village of Woodbury has no present jurisdiction to affect the decisions of the Town in this regard.

However, any change to the present Zoning Code, can only be accomplished by the Board of Trustees of the Village of Woodbury. As with any person or entity within the new Village limits, if you desire a change to the Zoning Code you can do so by directing such a request to the Village of Woodbury, identifying the specific changes that you desire, including, but not limited to, a change in the Zoning Code to permit the multi-family residential project to which you refer. Upon receipt of such a request the Board of Trustees will schedule it as an agenda item for an upcoming Village Board meeting.

In response to your remaining queries, the Code for the new Village of Woodbury was adopted by operation of law in accordance with New York State Village Law to be the Code that existed for the Town of Woodbury on August 28, 2006, the date of incorporation for the Village of Woodbury. Further,

upon assumption of the responsibilities of the Building Department as noted above, the Village will be complying with the New York State Building Code to the extent required by law.

I trust the above satisfies your inquiry.

Very truly yours,

s/
Richard B. Golden

cc: Mayor and Trustees
Village Clerk
Town Attorney
Town Supervisor and Board Member

RUBIN STERNGASS
129 Ridge Road
Valley Cottage, New York 10989
HOME: (845) 268-2558
CELL: (845- 721-0421
FAX: (845) 268-2176

November 22, 2006

The Village of Woodbury
Post Office Box 546
Central Valley, NY 10917
Attention:

Village Mayor Stephanie Berean-Weeks and Trustee Joann Stabile, Trustee Michael Kling, Trustee Patrick Kinney, and Trustee Neil Crouse

Reference:
345 Ridge Road, Highland Mills, New York

Dear Mayor and Trustees:

This request relates to my land that is situated at 345 Ridge Road in Highland Mills, New York, as per the enclosed area map, under Tax Identification No. 4-1-14.2. My chain of title, for this improved site, reveals that it was improved with the structures, prior to 1928.

The Town of Woodbury established its Zoning Law, pursuant to its enabling act by the State of New York, in 1928. The site was further developed and improved, pursuant to its permitted multi-

residential use, as so written within that 1928 Zoning Law from 1945.

The Town of Woodbury's Zoning Board of Appeals in 1964 ratified and confirmed the above-mentioned site as being constitutionally protected against subsequent legislative action.

I am hereby requesting that you - the Village Mayor and Village Trustees, as named herein, respond to my Notice of Claim that is being presented now. I must receive your formal legislative response as soon as possible.

In addition, I present the following queries to you:

1. Does the newly formed Village Woodbury, as presently constituted, accept and enforce the 1928 Zoning Law of the Town of Woodbury and as originally written?

2. Will the Village of Woodbury produce a written confirmation, as a public developer desires to construct a Town-home, multi-family residential project that yields 14 units per acres, on this site?

3. Do I properly expect that the State of New York's Building Code requirements will be complied with?

Kindly reply as soon as possible. Thank you.
Respectfully,

Rubin Sterngass
RS: ag
Enclosure
Copy to: Village of Woodbury
Clerk/Treasurer Desiree Potvin

LexisNexis Academic

VERNON PARK. RIEALTY, INC., Respondent, v. CITY OF MOUNT VERNON, Appellant.

Court of Appeals of New York

307 N.Y. 493; 121 N.E.2d 517; 1954 N.Y.LEXIS 979
Argued April 20, 1954.
July 14, 1959, decided

PRIOR HISTORY: [***1]
Vernon Park Realty v. *City of Mount Vernon*, 282 App. Div. 890, affirmed.
APPEAL, on constitutional grounds, from a judgment of the Appellate Division of the Supreme Court in the second judicial department, entered October 28, 1953, which unanimously affirmed a judgment of the Supreme Court in favor of plaintiff entered in Westchester County upon a decision of the court on a trial at Special Term (COYNE, J.), declaring defendant's zoning ordinance of 1927, as amended in 1949 and 1952, unconstitutional as to plaintiff.
DISPOSITION: LEWIS, Ch. J., CONWAY, DESMOND, FROESSEL and VAN VOORHIS, JJ., concur with DYE, J.; FULD, J., dissents in opinion.

Judgment affirmed.

HEADNOTES: Municipal corporations - zoning - constitutional law - (1) zoning ordinance of City of Mount Vernon placing plaintiffs property, located in center of business area, in residence district and, by

later amendments, prohibiting use of property except for parking and storage of automobiles and service station within parking area, is unreasonable and arbitrary and constitutes invasion of property rights contrary to constitutional due process - (2) ordinance is not reasonable exercise of police power although land [***2] had, for long time, been devoted to parking, as valid nonconforming use - (3) purchase of property by plaintiff shortly before amendment of zoning ordinance permanently limiting use of property, under contract giving purchaser right to rescind if zoning was not changed, did not render plaintiff guilty of lack of good faith - (4) purchase of property with knowledge of restriction does not bar test of validity of zoning ordinance - (5) owner's right to attack validity of ordinance not waived by prior application for variance.

1. An area in the city of Mount Vernon known locally as the "Plaza", consisting of an open area of approximately 86,000 square feet, adjacent to a railroad station and in the middle of a highly developed Business "B" district (Zoning Ordinance, 1927, ch. 12), had always been used by patrons of the railroad and others for the parking of private automobiles. It was placed in a Residence "B" district (Zoning Ordinance, adopted 1927), following which the parking of automobiles was continued as a valid nonconforming use. In 1932, the city granted a variance to permit the installation of a gasoline filling station. In 1951, the railroad sold the premises to plaintiff, [***3] title being dosed on June 21, 1951. The purchaser was unsuccessful in applying for a variance to permit the erection of a

retail shopping center which was a prohibited use as the zoning ordinance then read (Zoning Ordinance, adopted 1927).

CLEARVIEW GARDENS POOL CLUB, INC. v. FOLEY
Cite as 244 N.Y.S.2d 969

In the Matter of CLEARVIEW GARDENS POOL CLUB, INC., Petitioner, v. Max H. FOLEY, Chairman, et al., constituting the Board of Standards and Appeals of the City of New York, Respondents; William Grodzinski et al., Intervenors-Respondents.

Supreme Court, Appellate Division, Second Department
Nov. 26, 1963

Proceeding to annul a determination of the Board of Standards and Appeals of the City of New York revoking a permit issued by the Department of Buildings for the construction, use and operation of a non-profit swim club. The Supreme Court, Queens County, Fitzpatrick, J., transferred the proceeding for disposition. The Supreme Court, Appellate Division, held that variance grants did not take from owner of the property its statutory right to use the property for purpose permitted by an applicable zoning regulation, including its use for a swim club, and owner retained right to revert at any time to such conforming use, and therefore, it was entitled to permit for swimming club use even if such use was contrary to a variance granted for a portion of the property for use thereof as a nursery school.

Determination annulled, Board directed to reinstate permit.

1. Zoning 388, 546

Variance, grants did not take from owner of the property its statutory right to use the property for purpose permitted by an applicable zoning regulation, including its use for a swim club, and owner retained right to revert at any time to such conforming use, and therefore, it was entitled to permit for swimming club use even if such use was contrary to a variance granted for a portion of the property for use thereof as a nursery school.

2. Zoning 465, 468

A landowner acquired a vested right in a permit for construction of a swimming pool where, after its issuance, it proceeded with construction work in pursuance of the permit and incurred liabilities with respect to the work and materials involved in the construction and Board of Standards and Appeals thereafter had no right to revoke the permit.

Morgenstem & Winnick, New York City, for petitioner; Gerald J. Beldock, Brooklyn, of counsel.
Leo A. Larkin, Corporation Counsel, New York City, for respondent; Alfred Weinstein, New York City, of counsel.
Morrell Schwimer, Brooklyn, for intervenor-respondent Grodzinski; Jay L. Schwimer, of Counsel.

Briarcliff Associates Inc., et. al. v. Town of Cortlandt, 708 NYS2 421; 272 AD2 488; denied 96 NY2 704; 23 NYS2 130.

With internal Federal and United States Supreme Court citations confirming that an uncompensated regulatory taking violates the Fifth (5th) Amendment and raises the issue of Trial pursuant to the Seventh (7th) Amendment:

> "The Government's action is lawful soley because it assumes a duty, imposed by the constitution, to provide just compensation." (Ninth Circuit Court of Appeals) (1997-1999).

The Second Department's "no substantial constitutional issue is directly involved" (55a) is in conflict with the supremacy clause and fundamental principles of Justice requirements, as in this matter. To me, this seems to be in conflict with the United States Supreme Court's Affirmation of the Ninth Circuit's case view of Just Compensation and "no middle ground" edict of the Honorable Justice Marshall.

State of New York
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
On the Nineteenth day
Of September 2000

Present, Hon. Judith S. Kaye, Chief Judge, presiding

Mo. No. 1105 SSD 58

Briarcliff Associates, Inc.,
Appellants,
v.

Town of Cortlandt,
Respondents.

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte,* upon the ground that no substantial constitutional question is directly involved.

S/_____
Stuart N. Cohen
Clerk of the Court